

PT 98-36

Tax Type: PROPERTY TAX

Issue: Government Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**DU PAGE TOWNSHIP
APPLICANT**

v.

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE**

Docket No: 94-99-96

**Real Estate Exemption
For 1994 Assessment Year**

P.I.N. 02-15-106-020

Will County Parcel

**Robert C. Rymek
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Thomas R. Osterberger of Rooks, Pitts and Proust, on behalf of Du Page Township.

SYNOPSIS

This proceeding raises the issue of whether Will County Parcel Index Number 02-15-106-020 should be exempt from 1994 real estate taxes under section 15-60(c) of the Property Tax Code¹ (hereinafter the "Code") which exempts "all public buildings belonging to any county, township, city, or incorporated town, with the ground on which the buildings are erected" (35 ILCS 200/15-60(c)).

This controversy arose as follows:

¹ In People ex. rel. Bracher v. Salvation Army, 305 Ill. 545 (1922), the Illinois Supreme Court held that the issue of property tax exemption necessarily depends on the statutory provisions in force during the time for

On September 1, 1994, Du Page Township (hereinafter the “Township” or “applicant”) filed an Application for Property Tax Exemption with the Will County Board of Review. The Board reviewed the Township’s application and on November 16, 1994, recommended that the subject property be exempted from 1994 property taxes. On December 29, 1995, the Illinois Department of Revenue (hereinafter the “Department”) rejected the Board’s recommendation and denied the exemption concluding that the property was not in exempt use. The Township filed a timely appeal from the Department’s denial of exemption. On June 12, 1997, a formal administrative hearing was held at which evidence was presented. Following a careful review of all the evidence, it is recommended that the subject parcel be exempted from 1994 real estate taxes.

FINDINGS OF FACT

1. Dept. Gr. Ex. No. 1 and Dept. Ex. No. 2 establish the Department’s jurisdiction over this matter and its position that the subject parcel was not in exempt use during 1994. Dept. Gr. Ex. No. 1.
2. The subject property is located at 251 Canterbury Lane in Bolingbrook. Dept. Gr. Ex. No. 1.
3. The subject property consists of 2.2 acres of land improved with a one-story 14,558 square foot building (hereinafter the “senior center”). Dept. Gr. Ex. No. 1.
4. The Township acquired title to the subject property via a quitclaim deed dated February 26, 1993. App. Ex. No. 1.
5. The senior center is used as a non-residential senior citizens recreational center over 90% of the time. Tr. p. 13.

which the exemption is claimed. This applicant seeks exemption from 1994 real estate taxes. Therefore, the applicable provisions are those found in the Property Tax Code (35 ILCS 200/1 *et seq.* (1994)).

6. The senior center is occasionally rented out for banquets. Tr. pp. 36-40.
7. The senior center is open to the public although non-residents are charged a nominal fee. Tr. pp. 21, 35.
8. The Township is a unit of local government established under the laws of Illinois (60 ILCS 1/1-1 *et seq.*) and is 1 of 24 townships located in Will County. Tr. pp. 14-18.

CONCLUSIONS OF LAW

An examination of the record establishes that this applicant has demonstrated by the presentation of testimony, exhibits and argument, evidence sufficient to warrant a partial exemption from 1994 property taxes. Accordingly, under the reasoning given below, the determination of the Department that the above-captioned parcel does not qualify for exemption should be rejected. In support thereof, I make the following conclusions:

Article IX, section 6 of the Illinois Constitution of 1970 limits the General Assembly's power to exempt property from taxation as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986). Furthermore, article IX, section 6 does not in and of itself grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limitations imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill.2d 132 (1959). Thus, the General Assembly is not

constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App.3d 497 (1983).

In accordance with its constitutional authority to exempt “the property of” local governments, the General Assembly enacted section 15-60(c) of the Code which exempts “all public buildings *belonging* to any county, township, city, or incorporated town, with the ground on which the buildings are erected.” (35 ILCS 200/15-60(c) (emphasis added)). Thus, the exemption is based simply upon ownership as opposed to use. Public Bldg. Comm’n v. Continental Illinois Nat’l Bank & Trust, 30 Ill. 2d 115 (1963).

Here, the Township presented clear and convincing evidence that in 1994 it owned the subject property, which consisted of a public building and the ground upon which it was erected. Accordingly, under section 15-60(c) of the Code, the subject property is entitled to an exemption from 1994 property taxes.

WHEREFORE, for the reasons stated above, I recommend that the subject parcel be exempt from real estate taxes for the 1994 tax year.

Date

Robert C. Rymek
Administrative Law Judge